

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF YORK**

Tom Kearney
DISTRICT ATTORNEY



YORK COUNTY
JUDICIAL CENTER
45 NORTH GEORGE ST.
YORK, PA. 17401
(717) 771-9600 Office
(717) 771-9738 Fax

MEMORANDUM

TO: **Mark Bentzel**
Chief of Northern York County Regional Police Department

Trooper Thomas E. Grothey
Pennsylvania State Police

Corporal Steven J. Wise
Pennsylvania State Police

cc: **Media**

FROM: **Tom Kearney**
District Attorney of York County

DATE: **September 10, 2013**

RE: **Death Investigation: Death of Clifton Thomson**
Date of incident: February 21, 2013 approximately 1:39 am
Location: 475 Hykes Mill Rd, Conewago Twp, York Co, PA.

On February 27, 2013, the undersigned issued a memorandum regarding preliminary findings as a result of the preliminary report of Corporal Steven J. Wise, Pennsylvania State Police, regarding his investigation into the death of Clifton Thomson. The undersigned is now in receipt of the final investigation report authored by Trooper Thomas E. Grothey, Pennsylvania State Police and I have reviewed same. As you are aware, I was also present on scene, immediately following the events which led to this death investigation.

The synopsis of Trooper Grothey is as follows:

This investigation originates from a police-involved shooting where an officer from the Northern York Regional Police Department shot and

killed the deceased Clifton Neal THOMSON at his residence. Due to the nature of the incident involving a police officer, the York County District Attorney's Office requested that the Pennsylvania State Police respond to as well as, investigate, the shooting.

This incident occurred as, Nickolas KULCZAK, Crisis Counselor for Wellspan Health, received two phone calls from the deceased THOMSON at 0116 & 0120 hours. The deceased related he is struggling with anxiety and depression. The deceased basically threatened to kill himself. KULCZAK contacted York County Control and requested Northern York Regional Police Department to check on the welfare of the deceased.

Northern York Regional Police Department was dispatched to the deceased residence. They arrived on scene at approx. 0156 hours. The responding officers were Cpl. John HARTLEY, Cpl. James KULAK, Officer Cody BECKER, Officer Noah POTTIERGER, and Officer Stephen MCCLURE. Upon the officer's arrival, they parked their patrol vehicles along Hykes Mill Road in front of the deceased residence. The said officer's knocked on the doors and windows in attempt to make contact with THOMSON or his wife Joan THOMSON. Joan answered the front door. The said officer's removed Joan from the residence and placed her in a patrol vehicle. At this time the officers were unaware of THOMSON's location at the scene.

Cpl. HARTLEY, Officer BECKER, and Officer MCCLURE, walked through the living room into the dining room. They made contact with THOMSON who was in the kitchen which is attached to the dining room. THOMSON confronted them armed with a Marlin 30-30 caliber rifle. THOMSON was standing near the southeast corner of the kitchen. THOMSON was approx. 10-15 feet from the kitchen door way which leads into the dining room. The said officer's took cover behind the corner wall in the dining room between the living room doorway and kitchen doorway. Officer BECKER was at the corner of the kitchen door way, Cpl. HARTLEY was right beside Officer BECKER, and Officer MCCLURE was beside Cpl. HARTLEY. They started to negotiate with THOMSON. Cpl. HARTLEY requested Officer BECKER to exit the residence and take a position up outside to the rear of the residence since there was a door in the kitchen which led to the rear of the residence. Officer James KULAK replaced Officer BECKER. Cpl. HARTLEY then took up the position at the corner of the kitchen door way.

THOMSON then discharged one round from his rifle in the direction of the officers in the residence. The round struck a chandelier above the dining room table, and then struck the wall above the china cabinet. Cpl. HARTLEY related to THOMSON, he knew he wasn't intending to shoot them. THOMSON related he did intend to shoot them. The said officers

continued to negotiate with THOMSON. THOMSON then exited the kitchen door which leads to the rear of the residence with the rifle. Officer BECKER took up a position behind a vehicle which was parked in the driveway. The vehicle was approx. 60 feet North west of the rear kitchen rear door.

Officer BECKER gave THOMSON several verbal commands to drop the rifle. THOMSON was non-compliant and ignored Officer BECKER'S command to drop the rifle. THOMSON advanced towards Officer BECKER. THOMSON then pulled his rifle up to his shoulder. THOMSON pointed the muzzle at them and was looking directly in their direction. BECKER related he continued to challenge THOMSON. THOMSON continued walking in their direction with the rifle at his shoulder and the muzzle pointed in their direction. Officer BECKER engaged THOMSON discharging 4 rounds of 5.56 mm from the department rifle, striking THOMSON in the head area, killing THOMSON.

Of interest was the fact that the 30-30 Marlin rifle carried by Mr. Thomson at the time of his death contained no live rounds in either the chamber or the magazine and was recovered with the lever in a half open position. While the officers in securing the perimeter would have been justified in believing that an individual who had just fired his weapon once would do so again, one can only speculate as to the goal of the deceased in defying the demands to him to put down the weapon which he had just fired,, and instead pointing it directly at the officers.

The police interview of Mrs. Thomson revealed that the deceased was very depressed and had spent most of his day sleeping. When not sleeping he was irritable or crying. The pair went out to dinner and Mrs. Thomson encouraged her husband to go to the hospital. He complied, and presented himself to Urgent Care. He began the encounter by saying: "Do you have something for crazy people?" When the receptionist responded, "I feel like that myself," Mr. Thomson became angry and walked out. Mrs. Thomson then took him home and the deceased rested on the sofa. About 9:00 p.m. Mrs. Thomson went to bed on the first floor of the residence. She was wakened by a police officer knocking on her window. She then heard knocking at the front door and answered it to police inquiring as to the whereabouts of her husband. She was told that she must accompany the police out of the residence. She responded in the affirmative when asked by police if her husband had guns in the residence. As she was exiting she heard her husband tell the police to get out of the residence. She was taken to a patrol vehicle and as she was waiting, she heard a gunshot from the inside of the premises. An officer then came to her vehicle and obtained his rifle. Several minutes later she heard shots. She could not see what had happened from her location inside the vehicle.

Mrs. Thomson stated to investigators that her husband frequently talks about killing himself and has attempted to do so in the past. Her perception as related to investigators was that Mr. Thomson wanted police to kill him.

According to Mrs. Thomson, her husband had a series of medical problems, including prostate cancer, heart problems and diabetes. He was sporadic at best in taking treating medications. He struggled with anxiety and was depressed and physically miserable all the time. He was seeing Dr. Melisa Baylor for his medical issues but had missed an appointment scheduled for February 19.

Dr. Baylor related Mr. Thomson was there for an appointment January 20, 2013. Dr. Baylor related Thomson's mood was really down. He was having financial problems. He was really depressed. Dr. Baylor related Thomson's diabetes was really out of control. They switched Thomson's medication for his diabetes. Thomson was on Venlasaxine. They switched his medication to Citalopram. Dr. Baylor related she has no idea if Thomson was taking his medication.

Postmortem Toxicology analysis did reveal the presence of 7-Aminoclonazepam and Citalopram/Escitalopram within bloodstream of Mr. Thomson. 7-Aminoclonazepam is a major metabolite of clonazepam marketed as Klonopin. It is prescribed for diabetes and is also utilized for anxiety and panic disorders. Citalopram/Escitalopram is also used for treatment of major depressive disorders and generalized anxiety disorders. Medical literature does show a slight increase in suicidal ideations (although statistically insignificant for study purposes) with the use of Citalopram/Escitalopram. A 2011 study by the National Institute of Health recognized the benefits of the drug to both reduce the severity of depression in diabetic patients without an adverse effect on glycemic control. The presence of Ethanol (alcohol) was not noted.

STATEMENT OF THE LAW

There are specific provisions that relate to the use of deadly force. As stated in the Pa Crimes Code, 18 PaCSA § 505(a); the use of deadly force is not justifiable unless the actor believes that such force is necessary to protect himself against death or serious bodily injury, nor is it justifiable if the actor provoked the use of force against himself in the same encounter; or the actor knows that he can avoid the necessity of using such force with complete safety by retreating.

It should be noted, however that a public officer justified in using force in the performance of his duties is not obliged to desist from efforts to perform such duty, because of resistance or threatened resistance 18 PaCSA §505(b). In this context, a person employing protective force may estimate the necessity thereof under the circumstances, as he believes them to be when the force is used, without retreating.

The Fourth Amendment requires peace officers to use only an amount of force that is objectively reasonable in light of all the surrounding circumstances. Graham v Connor, 490 U.S. 386, 397, 109 S.Ct. 1865, 104 L.Ed.2d. 443 (1989). Assessing the level of permissible force “requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests and the countervailing governmental interests at stake.” Id.

Courts must give due regard to the fact that officers frequently make split-second judgments about the amount of force to use without the benefit of hindsight. Graham, 490 U.S. at 396-97. Indeed a claim of self defense cannot be defeated by showing that the actor used more force than was necessary so long as he reasonably believed it was immediately necessary to kill in order to protect himself against death or serious bodily harm. See Comm v. Fisher, 491 Pa 231, 420 A.2d 427 (1980).

ISSUE AND OPINION

In the instant case, the issue is whether the deadly force that was used by the officers was unreasonable under the circumstances such that criminal charges should be brought.

With regard to the mental state of the officers as the incident developed, it is clear that the circumstances known to the officers justified their gaining forcible entry to the premises in order to prevent Mr. Thomson from harming himself or possibly anyone else who may have been in the residence. Mr. Thomson had clearly expressed his suicidal intent to crisis intervention. When the officers entering the home attempted to talk him out of those intentions they were fired upon at close range. Despite that fact they continued to negotiate with Mr. Thomson. Shortly thereafter, Mr. Thomson went out the back door where he became aware of the officers outside the residence. Ignoring repeated requests to put his weapon on the ground, Mr. Thomson instead advanced, shouldered his rifle, and pointed it directly at the officer. Only then did the police officer who was being threatened discharge his weapon.

The public, and law enforcement especially, are well aware of a concept known as “suicide by cop.” Prudence dictates that in addressing the situation where the occupant of a building has expressed suicidal ideations, officers should make plainly clear who they are and have their weapons at the ready.

Mr. Thomson had not only clearly stated his intent to commit suicide, but by initially firing his weapon in the direction of the officers inside the home, and again by advancing and shouldering his weapon and pointing it at the officers outside, acted in a manner to provoke the officers into aiding him in the act.

The officer was clearly in imminent danger of immediate serious bodily injury or death at the time he discharged his weapon at Mr. Thomson. It is also beyond question

that the officers' fear of immediate serious bodily injury or death was reasonable. His intention was to help prevent violence, not cause it.

Accordingly, the officer's use of deadly force in response to Mr. Thomson's decision to shoulder his weapon and point it at the officer after already shooting once was justified and no criminal action or professional misconduct charges would lie.

CONCLUSION

In the instant case, the issue is whether the deadly force that was used by the officer was reasonable under the circumstances. With regard to the mental state of the officer as the incident developed, it is clear that the circumstances that he observed made it apparent that he was in imminent danger of immediate serious bodily injury or death at the time deadly force was utilized in the discharge of his service weapon. It is also beyond question that the fear of immediate serious bodily injury or death was reasonable. Mr. Thomson's actions were designed to draw the response of deadly force by the officer. Accordingly, the use of deadly force in response to Mr. Thomson's conduct was justified and no criminal action would lie.

The cause of death is determined to be gunshot wounds. The manner of death is determined to be justifiable homicide.

The matter is now closed.